



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CEPR-P (715)

27 DEC 1998

**MEMORANDUM FOR COMMANDERS, ALL MAJOR SUBORDINATE COMMANDS,
DISTRICT COMMANDS, FIELD OPERATING ACTIVITIES AND
LABORATORIES; ATTN: DIRECTORS/CHIEFS OF
CONTRACTING**

**SUBJECT: PARC (Principal Assistant Responsible for Contracting) Instruction Letter 99-3, Time
Limits for Decisions by Contracting Officers on Contractor Claims**

1. References:

- a. FAR 33.211(c) – Contracting Officer Decision.
- b. Chief Trial Attorney Note, CECC-F, 04 JUN 1998, no subject, enclosure 1.
- c. Armed Services Board of Contract Appeals (ASBCA) Nos. 51195 and 51197, 19 May 1998, enclosure 2.

2. Reference a. states that contracting officers shall issue decisions for claims within the following time limitations:

- a. For claims of \$100,000 or less, 60 days after receiving a written request for a final decision from the contractor, or within a reasonable time after receipt of the claim if the contractor does not make such a request.
- b. For claims over \$100,000, 60 days after receiving a certified claim; provided, however, that if a decision will not be issued within 60 days, the contracting officer shall notify the contractor (within that 60 day period) of the time within which a decision will be issued. However, neither the Contract Disputes Act of 1978 nor the FAR provide any specified time limit for issuing a decision.

3. Reference b. is the Chief Trial Attorney Note that provided guidance to Corps trial attorneys concerning the ASBCA decisions, reference c. above.

4. Reference c. consists of two (2) ASBCA cases wherein the contracting officer notified the contractor of specific dates by which the contracting officer would render a decision on the claims, but the ASBCA found the specified dates as unreasonable. The Government timely notified the contractor of the dates by which decisions would be issued on the two claims submitted by the contractor (these dates were approximately 16 months after the receipt of the 1st claim and 14

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months after receipt of the 2nd claim). The contractor alleged that these dates were unreasonable and interpreted such unreasonableness as a deemed denial of their claims; therefore, the contractor appealed (under the Contract Disputes Act) these denials to the ASBCA.

5. ASBCA concluded that the dates established by the contracting officer for issuance of decisions were unreasonable. They stated: (a) that there was no justification for establishing a 14-month period for deciding the one claim, to all appearances a relatively small, straightforward construction claim; and, (b) although the other claim was larger and more complex, prior to its submission the Government had performed an extensive analysis of the contractor's underlying proposal, with the benefit of an audit, and determined it had no merit. With this background, it was unreasonable to establish a further time period of 16 months for issuing a decision.


6. In cases alleging a deemed denial of a claim, it is not enough to show that the contracting officer established a firm date for a final decision. Rather, the Government has the burden of proving that the date established is reasonable.

7. Contracting officer's shall, when establishing a date longer than 60 days for issuing a final decision on a claim, document their reasons for doing so and include them in the contract file. By doing so the Corps will have contemporaneous evidence to demonstrate to a Board or court that the date established was reasonable.

8. Our point of contact for this action is Mr. Roger Adams, CEPR-P, (202) 761-5221.

FOR THE COMMANDER:

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Principal Assistant Responsible
for Contracting